

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, OCTOBER 14, 2010
APPROVED MINUTES**

Chair John Ellis called the meeting to order at 1:45 p.m. at the Red Lion Hotel at the Park in Spokane and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
 Commissioner Mike Amos, Selah
 Commissioner Rebecca Roe, Seattle
 Senator Margarita Prentice, Seattle
 Senator Jerome Delvin, Richland
 Representative Gary Alexander, Olympia
 Representative Geoff Simpson, Covington

STAFF: **Rick Day**, Director
 David Trujillo, Deputy Director
 Mark Harris, Assistant Director – Field Operations
 Amy Hunter, Administrator – Communications & Legal
 Jerry Ackerman, Senior Counsel, Attorney General’s Office
 Gail Grate, Executive Assistant

Chair Ellis apologized for the brief delay in starting the meeting, explaining there was a government-to-government relations work session with the Spokane Tribe that started at 11:30 a.m. and ended at 1:30 p.m. Attendees of the work session included: Tribal Council Vice-Chair Michael Spencer, Tribal Gaming Commission Chair Andrew Matherly, Director Ron Samuels, Tribal Attorney Bruce Didesch, Commission Chair John Ellis, Commissioner Mike Amos, Commissioner Rebecca Roe, Senator Margarita Prentice, Director Rick Day, Deputy Director David Trujillo, Assistant Director Mark Harris, Administrator Amy Hunter, AAG Jerry Ackerman, and Executive Assistant Gail Grate. Eight members of the public observed the work session.

1. Agenda Review / Director’s Report:

Director Rick Day thanked those who attended the Government-to-Government Work Session, which included discussion about the Tribe, regulatory operation, and the current relationship with the state of Washington and the Spokane Tribe through its gambling regulatory operations. Director Day appreciated the Spokane Tribe’s willingness to participate and hoped they found it to be beneficial.

Director Day briefly reviewed the agenda, handouts, and material provided to the Commissioners.

Chair Ellis pointed out the possibility the Commission would need to have an executive session at the end of Friday's agenda. One of the topics that was to be discussed during the executive session on Thursday could not be usefully addressed because of the absence Vice Chair Rojecki and Commissioner Reichert who will be attending Friday's meeting.

Basic Law Enforcement Academy (BLEA) Equivalency Graduates and BLEA Graduate

Director Day explained three special agents recently completed Basic Law Enforcement Training in the state of Washington. Special Agents Egon Dezihan and Teresa Reed came from other agencies and, as a result, completed the 80-hour equivalency academy. SA Dezihan spent quite some time with the FBI and SA Reed came from the Idaho State Police. Director Day acknowledged both of them for the completion of their studies and thanked them for joining the Gambling Commission as special agents in the Spokane regional office. Special Agent Wes Rasmussen completed the 720-hour basic academy at the Criminal Justice Training Academy in Burien, which is quite extensive and includes training ranging from firearms through cultural awareness. SA Rasmussen is based out of the Yakima field office.

Gambling Crimes Education and Awareness Program (PowerPoint Presentation)

Director Day explained the Gambling Crimes Education and Awareness Program was approved by the Commissioners, and staff implemented the program in 2009. Director Day introduced SA Zaher who would be providing the Commission a progress report.

Special Agent Robert Zaher reported that Special Agent Debby Vandal and he had been assigned to the Gambling Crimes Education and Awareness Program as of October of last year. The program was intended to raise awareness of gambling crimes, problem gambling, and underage gambling. It is a two-year program designed to run through October 2011 and funded entirely by assets seized in gambling cases (the federal forfeiture funds), and was approved by the Commission in August of 2009. They are taking an assessment approach to execute the program; determining the education and awareness needs of stakeholders, and then responding to those needs by providing information, literature, training, and assistance. Over the year, Special Agents Vandall and Zaher met individually with 44 police chiefs and sheriffs, or their representatives. Three training sessions were conducted at regional police chiefs' and sheriffs' meetings and six training sessions for police departments. When the program began, the Gambling Commission had a partnership with the Evergreen Council on Problem Gambling, which included doing 20 joint presentations to youth groups. The Council would talk more about the problem gambling aspect and Special Agents Vandall and Zaher would talk about underage gambling and gambling crimes that youth might commit. Six new brochures or items were created and thousands were distributed. Many other contacts were made to various groups to assess the needs of the stakeholders with regard to gambling education and awareness. Law enforcement agencies were contacted from different parts of the state in an attempt to get a wide geographic area to ensure the unique regional and local needs and concerns were being identified. The message of the Gambling Commission's sports betting public service announcement that ran last winter was

continued, as well as the *Don't Bet on It* campaign that was on the buses in Spokane and in the Puget Sound area. Bookmarks were printed that are currently being placed in the libraries and will also be taken to the universities. On the reverse of the *Don't Bet on It* bookmark is information on where to go for more FAQs on which types of sports wagering are legal and which are not. The Gamble Online flyer, which was created a few years ago to publicize the legal status and risks and of internet gambling were reordered and distributed throughout the state. Key chains were made with the *Don't Bet on It* logo that will be distributed at fairs and similar events. Plus the history and the mission of the Commission itself has been promoted through the agency overview brochure. Some of the Evergreen Council for Problem Gambling materials are actually joint publications that also have the Gambling Commission logo on them and are problem gambling brochures primarily designed for adults. One of the brochures from the Evergreen Council addresses teen gambling and is primarily aimed at parents and educators, but teens will find it useful as well. All of these are being placed in libraries, public places, and in police department lobbies. The police and sheriffs have also been helpful in assisting with distributing them to the community. One of the new items designed this year is a 32 page Gambling Crimes handbook that will be used as a resource for law enforcement. It has a two-page spread on each type of gambling crime, what the Statute is, and how law enforcement can help enforce that particular crime. There is a section on how to contact the agency, a section on the history of the agency, and information on problem gambling. SA Zaher hoped to go to print with this on October 25. He pointed out his business card was attached to the draft booklets that the Commissioners received, so they could email SA Zaher with any comments or questions they may have on the booklet.

Chair Ellis indicated that based on a very quick review of the booklet, it certainly shows a very impressive effort that he thought would be very useful.

Special Agent Zaher thanked Chair Ellis for his comment. The draft booklets have been shown to the police departments and they all want copies either electronically or in booklet form. A lot of their input was actually used in designing the booklet, as well as soliciting input from our staff. There is also a mini-booklet that was designed for those police departments that want something smaller, which has all the gambling RCWs and federal Statutes that apply to gambling-related activities. A two-sided pocket card was designed of hard plastic and lists the gambling crimes. In order to show that staff are reaching out to everybody, including those stakeholders for whom English is not a first language, a poster was designed called *Help Stop Illegal Gambling* that was translated into eight different languages: Cambodian, Lao, Vietnamese, Spanish, two versions of Chinese (simplified and traditional), Russian, and Korean. This will be a great tool when Agents Zaher and Vandall go into the neighborhoods and talk with business owners and community groups. The posters do not have the Gambling Commission phone number on it, but instead says to report violations online so they know where they can go when they see violations occurring. The four gambling types that were chosen for the poster were: underage gambling, unauthorized card games, sports betting, and wagering on animal fights. **Chair Ellis** thought that was a great idea.

Special Agent Zaher reported it was clear from prevalent surveys and from meetings with kids, parents, and educators that many young people are gambling. Depending on which prevalence survey is looked at, there is a substantial portion of young people who are gambling. At the Juvenile Detention Center in Kitsap County, the 30 teenage kids were asked to stand up. When gambling activities were named one-by-one, the kids sat down if they had participated in that activity. When finished, there was only kid standing. These were gambling activities that are either illegal for kids to do or gambling activities that adults would be participating in. Poker was a big one that the kids were doing, and a surprising number of kids were playing Mahjong. Street dice is an intercity type of game; a form of informal craps that are played in alleys. A lot of kids are involved in internet gambling. There are special challenges when reaching out to youth to discuss what is allowed and what is not, and to discuss gambling addiction. There is a special approach to take in order for youth to even pay attention to what they are being told. Some recommendations as far as youth have already been implemented that were proposed to the agency leadership team last month; some are being considered.

- Effective literature is the key; kids have to have something to look at that speaks to them without looking like it is coming from an adult telling them what to do.
- Utilize school resource officers.
- Vancouver School District has a procedure where they will distribute literature to every student in their district. That may be a way of reaching the kids with problem gambling materials, if they are willing to accept that.
- Utilize Social media.
- Work through community groups like teen centers.
- Get in touch with their peers; that is who they are going to listen to first and could be a very effective way.
- Continue to make contact with the chiefs and sheriffs throughout the state. They were very receptive of the materials and said they would like hundreds of them. One agency said they wanted 500 each of several pieces of literature they were shown and requested more information and assistance to identify and investigate gambling crimes.
- Continue to build relationships with the agencies
- Continue to provide literature and case help.

Special Agent Zaher explained that he and Special Agent Vandall plan to follow up over the next year on all the relationships they built the past year and make sure they are providing the agencies what they requested. They also spoke with university police chiefs and the directors of counseling and health centers at many of the major universities: Western, Eastern, Central, UW, and WSU. The concerns of the university officials and police chiefs are primarily sports betting and internet gambling. The counseling centers at the universities do not list gambling as an addiction for which students can seek help, and Special Agents Vandall and Zaher hope to encourage them to add gambling to their list. Recommendations received from the universities were to provide literature and training and to use residence advisors, student volunteers, and clubs as a means of conveying the

messages. SA Zaher believed Evergreen Council had gone in or were in the process of going in and providing training on problem gambling for the university counselors at several major universities. After a year of work, Special Agents Zaher and Vandall arrived at the interim conclusion that there was the need for more gambling crimes education in all of the audiences they contacted. An ongoing Gambling Crimes Education and Awareness effort can support our agency's mission in a number of ways:

- Increasing public awareness of, and confidence in, the Gambling Commission.
- Helping to prevent gambling crimes.
- Improving coordination with other law enforcement agencies
- Increasing the likelihood crimes are prosecuted
- Directing problem gamblers, whether adult or youth, to the help they need.

Special Agent Zaher said he and Special Agent Vandall were excited about this opportunity and looked forward to another year of progress with this program.

Director Day noted the Commissioners had approved this program, which takes up a couple pages in the budget. Special Agent Zaher reported on what it was turned into and what is being developed from it. It is a great compliment that they are actually moving forward with steps that will be very beneficial for the Commission and the state. Director Day noted that SA Vandall had recently hosted four visitors from Okinawa who had requested a presentation and information regarding gambling as they look at their issues in Okinawa.

Representative Alexander appreciated the fact that this was a good example of using one-time money for one-time purposes. He thought it was an excellent use of those funds.

Director Day pointed out the written Education Awareness Interim Report that had been included for the Commissioners to review.

Correspondence

Director Day briefly reviewed the correspondence items. The memorandum from Assistant Director of Licensing Tina Griffin summarizes tax rates. The Commission had a question about local taxes that came up in a previous discussion about financial reports and local jurisdictions. The last time this was reported to the Commission was in 2002 from information from the Washington Association of Cities. Staff compared the 2002 information to this year's information. Director Day noted an error at the top of the page for Auburn; the 12 percent should be changed to 4 percent in July. There were six jurisdictions that imposed the maximum of 20 percent in 2002, and there is currently one jurisdiction in 2010. Staff looked at some of the information behind this and found that some cities have lowered their taxes in the last couple years in an effort to help to keep the businesses open. So report should provide a pretty good idea of the different range of taxes. The state of Washington does not impose a gambling tax; that is an authority that is reserved, by law, to local authorities.

Chair Ellis indicated he was a little surprised to discover that in virtually all of the instances, with just a few exceptions, the tax rate applied to gross receipts (receipts including the value of prizes) and not to net receipts where the value of the prizes are deducted. That struck him as something he would have thought would be somewhat controversial. **Director Day** replied that although it was called gross receipts, that was actually sort of a misnomer. It is also termed as net win, but it is after prizes in the card rooms. **Chair Ellis** clarified he was looking at footnote #1 that indicates the tax is based on gross receipts unless otherwise noted. Footnote #4 identifies certain jurisdictions that base their tax on net receipts (gross minus prizes), but there are very few instances where that applies; just the cities of Olympia and Richland allow the deduction of the prizes. **Deputy Director Trujillo** explained it was generally based upon gross, with very few exceptions. He was not sure of the rationale behind the decisions of the cities, counties, and jurisdictions for basing it upon gross rather than net, but that is generally more the rule than the exception. **Assistant Attorney General Ackerman** added that, although he did not know this to be the fact, it struck him that this parallels the way most jurisdictions collect business and occupation taxes; that it is on the gross rather than on the net. **Chair Ellis** agreed that was what inspired his comment. It is a highly controversial approach to taxation. **AAG Ackerman** agreed.

Director Day reported the letter from J & F Entertainment from Spokane Valley was about closure of a card room, their concerned about things like regulation and competition, and their plans to hopefully reopen. There is also a response letter from Deputy Director Trujillo encouraging them to contact and work with the Spokane regional office.

The document entitled *Information Bulletin Only* is from the Washington State Gambling Commission and shows a likeness of the electronic benefit transfer card. Behind the bulletin is an e-mail and a release of information from the Department of Social and Health Services. News reports in mid-September identified the apparent misuse of electronic benefit cards that were authorized in 2002 by the Legislature. The use of electronic benefit cards for gambling purposes is prohibited in RCW. Secretary Dreyfus of the Department of Social and Health Services contacted our agency asking for assistance. Staff provided information on how licensees could be contacted in the effort to hopefully block the use of these cards at various facilities around the state. This bulletin was provided to help inform licensees and tribal gaming agencies. Also included are letters from the Recreational Gaming Association and Chairman Allen from the Washington Indian Gaming Association.

The Washington State Supreme Court Decision was filed on September 23 in the Lee H. Rouso v. State of Washington case. This was a challenge to RCW 9.46.240, which effectively bans internet gambling in Washington State. This issue started with legislation, Senate Bill 6613, in 2006 that inserted the term internet and telecommunication system in existing statute to clarify that portion of the law and created a class C felony. The bill also prohibited the use of the internet for the purposes of lottery gambling. Language was incorporated into the existing law that the Commission had already been enforcing as it was written to prohibit internet gambling in Washington. Our statutes are designed so that a game has to be specifically authorized to be legal. Internet gambling is not legal anywhere

in the United States according to federal law. In this case, the law was challenged on constitutional grounds as a violation under the commerce clause. The Supreme Court in a 9 to 0 decision held that the law does not in fact violate the dormant commerce clause as part of the constitution. Director Day extended thanks and congratulations on behalf of the Commission and agency staff to Jerry Ackerman and his assistant attorneys general. It was a great argument and was the second 9 to 0 decision in favor of the Gambling Commission. Director Day said the Commission appreciates Jerry and his teams work. The idea of winning two consecutive Supreme Court cases, let alone winning the cases 9 to 0, is quite astounding. .

Chair Ellis extended his thanks to AAG Ackerman. He noted that the opinion was written by Justice Sanders, indicating he was sure there were some legal experts in the state who were somewhat surprised by that. **Director Day** said it was also interesting that the opinion has apparently had national fallout. He had received a call from a man in California who felt he had been wronged by an internet provider where he was gambling. The man said he understood Washington was enforcing the internet law, but because he was from California, Director Day referred him back to his state.

Commissioner Roe asked if Director Day had referred the man from California to a lawyer. **Director Day** recalled the man did say something about if Director Day was to refer him, would he be subject to prosecution. Director Day had responded that he would be happy to refer him, but that he did not know what the possibilities might be. The man was still pretty upset about the way he had been treated, so he was willing to be referred. Director Day thought the website was Poker Stars, an international website that had recently announced that as a result of the decision they were blocking Washington residents from that website. Staff are aware there is also consideration by other websites. From an enforcement officer's point of view, Director Day was not entirely sure why they would wait for this decision because it was pretty clear anyway. But, at any rate, the announcement of this decision has had a fairly significant impact and he thought the Commission would continue to see that as the case.

Monthly Update Reports and News Articles

Director Day pointed out in the monthly updates that staff has not seen any progress on the federal legislation, particularly HR 2267, which is the internet bill introduced by Representative Frank. Staff understands, informally, that it is not likely the bill will move out during this session, but stranger things have happened. At the last Commission meeting, the Commission looked at some problem gambling statistics about internet gambling and Director Day had volunteered to provide more information. With the assistance of Lead Staff Attorney Melinda Froud, Director Day was able to come up with some notes to share with the Commission. Staff can provide additional information, if the Commission would like, as these studies were quite lengthy. One is an abstract from the International Journal of Mental Health entitled *In 2007 internet gambling behavior in a sample of online gamblers*. The sample was 563 in this case; 77 percent of the respondents reported playing gambling type games without money and 42 percent reported gambling on the internet. Interestingly,

23 percent of the participants were identified as problem gamblers in that particular survey. *Internet Gambling and Emerging Concern in Family Practice* is a medical article from the *Family Practice* publication. In this case, there was a screen administered to 1,414 adults. Only 6.9 percent of the respondents reported ever gambling on the internet, which is a fairly small percentage, with 2.8 percent indicating frequent internet wagering. However, almost two-thirds, or close to 66 percent, of regular internet gamblers were classified as problem or pathological gamblers, compared with 29 percent of those that just gambled a little bit on the internet and 7.6 percent of the non-internet gamblers. So the internet gamblers were a smaller percentage in this study, but a high percentage of problem gamblers.

Chair Ellis asked for clarification that Director Day had said just a small amount of the 29 percent of the gamblers who just gambled on the internet were identified as problem gamblers. **Director Day** replied that 6.9 percent of the respondents reported ever gambling on the internet. So they did gamble, but not regularly on the internet. Then 2.8 percent indicated frequent internet wagering. So two-thirds of the regular ones (the 2.8 percent), which is 66 percent were identified as problem or pathological. And the ones that had used the internet infrequently were 29.8 percent. Both are high percentages. Another article is from the *American Journal on Addictions* from 2007. They did a gambling screen in a general health questionnaire of 1,356 undergraduates. 23 percent reported ever gambling on the internet, with 6.3 percent reporting gambling on the internet at least weekly. Almost two-thirds of the regular internet gamblers (61.6 percent) were pathological gamblers, compared to the almost 24 percent of those infrequent gamblers; and for those non-internet gamblers, only 5 percent. Director Day thought these were fairly significant statistics that paralleled what the Commission heard at the last meeting. Ms. Froud advised him that it was not exciting going through the whole text of those studies, but if the Commission was interested in reading the long detail of the studies, staff would be happy to share them. Director Day reported there was only one seizure item still pending and numerous news articles that were included in the packets.

Chair Ellis asked if there were any questions; there were none.

2. Qualification/Program Review - Opportunities Industrialization Center of Washington

Special Agent Bryce Mack, assigned to the greater Central Washington area of the Eastern Region Office, explained he would be reporting on the Opportunities Industrialization Center (OIC) of Washington. Steve Mitchell, Mulugeta Beyene, Betty Alejandro, and Chris Link are present on behalf of the OIC of Washington. Years ago, lawmakers decided the raising of funds for the promotion of bona fide charitable or nonprofit organizations was in the public's interest and was authorized in RCW 9.46.0311. As a result, these organizations may conduct bingo, raffles, amusement games, punchboards/pull-tabs, card games, and other social pastimes in order to raise funds for their organizations. The Washington State Gambling Commission assigns charitable or nonprofit licensees to regulatory groups based on their annual gross gambling receipts for their combined license of activities. Licensees making between \$1 million and \$3 million are in Group 3; licensees making between \$3 million to \$5 million are in Group 4; and licensees making over \$5 million are in Group 5.

The OIC of Washington's combined gross gambling receipts place them in the category of Group 3.

In accordance with WAC 230-07-080, staff has prepared a summary of the organization's qualifications for the Commissioner's review. Opportunities Industrialization Center of America (OICA) is a nonprofit organization that operates through a national network of local affiliated organizations. OICA has 42 affiliates in 22 states and the District of Columbia. They have 45 years of experience in serving poor, unemployed, under employed, and youth. They prepare people for today's workforce with quality life skills development, fundamental education, superior job skills training, and employment readiness services. The purpose of the Program Review is to verify the organization continues to qualify and operate as a bona fide charitable or nonprofit organization and that the organization makes significant progress toward their stated purpose. Special Agents Wes Rasmussen and Bryce Mack reviewed the licensee's Articles, Bylaws, and monthly meeting minutes. Additionally, they went onsite and verified that the various program services were in existence. As a result of this review, it was noted that the organization did not maintain the requisite 15 voting board members in accordance with the rule. This violation resulted in a warning letter, but the OIC has since corrected the violation and is currently in compliance. The review also indicated the organization was out of compliance with its Bylaws in that it failed to hold an annual meeting whereby directors and officers with expired terms were up for election. The licensee agreed to correct this issue immediately. A selection of officers and employees were interviewed and it was determined these individuals reasonably displayed an understanding of the organization. Special Agent Donna Khanhasa of the Financial Investigations Unit determined the organization spent at least 60 percent of net gambling income on functional expenses, which include support and program service expenses. OIC provided the following program services for 2009:

- Low income weatherization program
- Low income energy assistance program
- Emergency food assistance program
- Summer youth and year-round program
- Washington farm worker investment program
- AmeriCorps projects program
- Community block grant program.

The review found the licensee has provided program services that support their stated purpose and they have materially complied with the requirements in their Bylaws and Articles of Incorporation. Staff recommends that Opportunities Industrialization Center of Yakima be allowed to continue gambling activities in the state of Washington. SA Mack informed the Commission that a representative of OIC Yakima would like to present an overview of their organization for the Commission.

Mr. Chris Link, Operational Director for OIC of Washington, presented a PowerPoint. He reported that Reverend Doctor Leon Sullivan founded OIC of Washington in 1964. OIC is a

self-help training program that has spread to 156 centers in the United States and 33 centers in 18 other countries and trained more than two million people worldwide. In 1992, Doctor Sullivan was awarded the Presidential Medal of Freedom. In addition, he established the Sullivan Principles, which were instrumental in bringing apartheid in South Africa down. He was on the board of General Motors and due to his Sullivan Principles and corporate responsibilities, apartheid was dissolved. The mission of the OIC is to help in the elimination of unemployment, poverty, and illiteracy so people of all colors and creeds can live their lives with greater human dignity. The mission includes the provisions of health, educational and human services, economic development, and services to secure and provide safe, decent, and affordable housing to eligible participants and residents in the state of Washington. In September 1970, Yakima Valley OIC, formerly OIC of Washington, formed and incorporated as a 501(c)(3) nonprofit organization. In 1971, it had 15 employees with an annual operating budget of \$156,000. It served 50 clients and placed 124 people into jobs. As of December 31, 2009, it has over a \$15 million operating budget, 142 full-time equivalent employees, and have served 55,599 households in 13 counties within the state of Washington. The geographic service area of OIC is up through Central Washington, including Skagit and King Counties, and all the way down to Klickitat, Skamania, and Benton-Franklin counties.

Some of their major programs are community service, weatherization and housing, and the workforce investment act, which includes two programs. There is a migrant seasonal farm worker program as part of the adult program and a youth training program as a part of the Workforce Investment Act (WIA) program. The other program is an AmeriCorps reading program, which goes into the schools and helps bring up the reading levels of the young people in elementary schools. OIC also operates the Leon Sullivan Health Center, a nursing home in Seattle, and the Southeast Community Center in Yakima. Under their community service programs, OIC has served 114,473 people at food banks, 17,140 people have received crisis assistance through their energy assistance program, and 5,537 sixth graders received energy education. That is where trained educators go into sixth grade classrooms and help the students teach their households how to save energy, which has been real successful overall. OIC had four volunteers who provided 777 hours of volunteer services within their food bank and distributed more than 430 tons of food in 2008. In 2010 more than 1,042 tons of food were distributed, which shows a major increase in the food, and the demand and the need in the communities within their food bank alone. In their housing and weatherization programs, 711 houses were weatherized. The weatherization programs come from a variety of sources such as Pacific Power and Light, Department of Energy money from the Department of Commerce, Health and Human Services, Cascade Natural Gas, and a variety of those kinds of things.

OIC repaired 45 houses with money that came from HUD. As a part of their housing program, they build houses for first time home buyers and use job training programs to build the houses. OIC markets the houses and sells them to qualifying people who are low income, bankable (credit worthy), and first time home buyers. Castlevale Manor is one of OIC's success stories. It is an 18-unit subdivision developed in Yakima through a joint venture between OIC of Washington, the Department of Community, Trade, and Economic

Development – which is now called the Department of Commerce – the Department of Housing and Urban Development, the City of Yakima, and major local lenders. They developed the land and had youth help build, which is another youth training program where the students built the houses under the supervision of qualified journeymen carpenters. OIC marketed the homes, they recruited low income qualified people, put them through the banking system so they would qualify, did credit checks on the family, and then they became homeowners. They have never owned a home before, so automatically through this process, first time homebuyers build up equity in their home. It was very successful and was the first major subdivision they did; they now have done three more.

Chair Ellis said that was excellent and that it sounded like their program was on a parallel track, to some extent, with Habitat for Humanity.

Mr. Link agreed. This latest subdivision is being developed in partnership with Habitat for Humanity. OIC developed a 20-unit subdivision; they developed the property and donated six of the lots to Habitat for Humanity as a partner within the subdivision. OIC was building houses and Habitat for Humanity was building houses – it was a really great program. The Workforce Investment Act (WIA) actually has two components. OIC has a youth service program and a migrant seasonal farm worker job training program both funded by the Department of Labor. They provided 410 people with jobs and 403 people completed first aid training. Within the WIA is a program called CAVI, which is the Community Agricultural Vocational Institute. The purpose of that program is to go out onto the farms and teach the farm laborers first aid, pesticide safety, and tractor training, which has been a very, very successful program that absolutely is needed. OIC currently runs an AmeriCorps program and a reading program to help kids increase their reading levels. OIC was awarded a Youth Build AmeriCorps Job Training Program where they take men and women, 18 to 24 years of age, and help them get their GEDs or high school diplomas – 55 people obtained their GEDs. Half of their time they are out on the job site building homes, so not only do they get the educational component, but they also get the work experience. They plan to start that program November 1, and it will be tied to their housing programs in another subdivision they are building.

The AmeriCorps reading program is a volunteer program that had 47,873 hours donated by 71 volunteers. They had 1,407 students receive their tutoring in the AmeriCorps program, and 24 members who received disaster preparedness training, which is a part of their training process and teaches what would happen if there was a major disaster and how they would respond to that in their community. Twelve literary events were conducted within OIC's service area. OIC of Washington is the general manager for the Leon Sullivan Health Care Center, which is located in Seattle. It is a 24-hour licensed skilled nursing facility with 184 staff members and 165 beds. It provides for Alzheimer's patients, physical therapy, and speech and hearing therapy. Another part of OIC is the Southeast Community Center located in a major low income, economically disadvantaged area of Yakima where it is very vital. The purpose of the Community Center is to bring the young men and women, and also the seniors, to a place where the kids can feel safe and there are activities. They can also reach out into the neighborhood and bring a bonding between the young people.

Within the Southeast Community Center, 4,080 meals are served by the senior lunch program that is open every day. 70 youth per day participated in the summer parks program over a three-month period, which is really, really important because of the gang problem in a lot of communities. OIC pulls all the kids together and tries to make sure they have activities where they bond and have interests that are structured for them. The annual Christmas dinner served 1,960 at Santa Village. This event is at OIC's Southeast Community Center and is held every year. There are a lot of kids who do not have Christmas or gifts, so OIC provides gifts for the kids and gets the families together. It is a big, big celebration for the neighborhood and has been very, very successful and actually almost made national news. There were six family night out events that 876 attended. A lot of the neighborhoods are in transition where people are moving in and out, families are renting homes, and they do not get to know their neighbors. At the family night out everyone is pulled together to get to know each other. It is tied to a crime watch and block watch program, and they work with the Yakima Police Department and Sheriff Department to tie all that together. There were 196 families served by the foot care, which is a senior program within the Southeast Community Center. OIC and the Southeast Community Center do a lot more than is listed.

Chair Ellis said Mr. Link indicated that in 2009 the OIC had a little over 400 people who obtained jobs through the program, and he thought there must be tremendous demand for that under the current economic circumstances. **Mr. Link** replied there absolutely was; that Yakima is a very depressed economy and it is a continual challenge. **Chair Ellis** asked if Mr. Link knew the number of people who have applied that are seeking jobs through the program. **Mr. Link** replied the organization does have that information, but he did not have it with him. **Chair Ellis** said that was fine and thanked Mr. Link for the presentation.

Commissioner Amos made a motion seconded by **Commissioner Roe** that the Gambling Commission continue to certify the gambling activities for the OIC of Washington program. Vote taken; the motion passed with three aye votes.

3. Defaults

a) Pee Wee's Tavern

Ms. Hunter reported Pee Wee's Tavern is a business in Tacoma. Staff is requesting the pull-tab license that was owned at the time by Floyd Jackson be revoked based on the business not upgrading its pull-tab license. A license is issued for a certain amount of gross receipts and if a licensee looks like they are going to exceed those gross receipts, they need to apply for a higher license and pay the fees that are required when that occurs. This business did not do that. The Director issued administrative charges to Pee Wee's Tavern by certified mail and regular mail. There was an employee who signed the certified mail receipt. When staff made a courtesy call to Pee Wee's Tavern, the person who answered the phone said they would have Floyd Jackson call back as soon as possible. Staff did not hear from Mr. Jackson. Staff got a call from a reporter who said Pee Wee's Tavern was in business and asked who was being revoked. Ms.

Hunter explained that Pee Wee's Tavern was still in business, but are under a new owner; it is the new owner who has now been issued a license. Staff are requesting the license of the previous owner be revoked. They did have a license at the time the charges were issued. By failing to respond, they have waived their right to a hearing. Staff recommends the Commission revoke the pull-tab license, which is 05-20130, that was issued to Floyd Jackson.

Chair Ellis asked if Floyd Jackson or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Amos** to revoke the license of Floyd Jackson.

Chair Ellis pointed out the proposed decision and order submitted by staff indicated the Commission orders that Pee Wee's Tavern's license to conduct gambling activities be revoked. He asked if the license was issued in the name of the tavern, noting there were two separate licenses – one of which is for the current operator, but the previous one was obtained by Mr. Jackson on behalf of the tavern at that time. **Ms. Hunter** affirmed that was correct. Staff went back and double checked that they had the correct license number for Mr. Jackson. If the Commission chooses to approve the motion, it will be the correct license that will be revoked.

Chair Ellis asked for confirmation that the motion was for the Commission to enter a default order revoking the license of Pee Wee's Tavern. **Commissioner Roe and Commissioner Amos** affirmed that was correct. Vote was taken; the motion passed with three aye votes.

b) Wilma L. Lomakema, Class III Employee, Revocation

Ms. Hunter reported that Ms. Lomakema worked as a class III employee for the Muckleshoot Casino. Ms. Lomakema admitted that in June, while working as a poker dealer, she took \$100 from her poker bank for her personal use. She apparently was planning on paying it back by the end of the work shift, but did not. The Muckleshoot Gaming Commission revoked her license. Charges were issued by certified mail and regular mail. The certified mail receipt came back unclaimed, but nothing was received back from regular mail, so it was presumed that Ms. Lomakema did, in fact, receive the charges. Staff also made a courtesy call and left a voice mail letting her know about the default proceeding. Nothing was received back, so Ms. Lomakema waived her right to a hearing and staff would recommend the Commission revoke Wilma Lomakema's class III certification.

Chair Ellis asked if Ms. Wilma Lomakema or a representative was present; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Roe** that Wilma Lomakema's class III certification be revoked by the Gambling Commission. *Vote taken; the motion passed with three aye votes.*

c) *Doris L. Bilow, Class III employee, Revocation*

Ms. Hunter reported Ms. Doris Bilow was working as a poker cage cashier for the Tulalip Tribes when a casino patron turned in money that had been found. Ms. Bilow told the patron to take the money to the main cage employee services window, which would be what the casino procedures required. But when the patron did not do that, Ms. Bilow instead took the money and put it in the cage token box, which is basically the tip box. The Tulalip Tribes revoked Ms. Bilow's license. Charges were issued by certified mail and regular mail. The certified mail receipt was signed by Jeff Bilow. Staff are not sure of his relationship to Ms. Bilow, but assume he is a relative given they have the same last name. The legal secretary spoke with Ms. Bilow and explained that she needed to request a hearing or staff would recommend that her certification be revoked. Ms. Bilow did not respond, so staff are requesting the Commission revoke her certification.

Chair Ellis asked if Ms. Doris Bilow or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Amos** to revoke Doris Bilow's class III certification to conduct gambling activities. *Vote taken; the motion passed with three aye votes.*

4. **Approval of Minutes – September 9, 2010 – Regular Meeting**

Chair Ellis asked if there were any comments or changes to be made to the draft minutes for the September 9, 2010, meeting of the Commission; there were none.

Commissioner Amos made a motion seconded by **Commissioner Roe** to approve the minutes from the September 9, 2010, regular Commission meeting as submitted. *Vote taken; the motion passed with three aye votes.*

5. **New Licenses and Class III Certifications**

Deputy Director Trujillo reported there were no pre-licensing reports for new house-banked card rooms or manufacturers this month and staff recommends approving all new licenses and class III certifications listed on pages 1 through 11.

Commissioner Roe made a motion seconded by **Commissioner Amos** to approve the new licenses and class III certifications listed on pages 1 through 11. *Vote taken; the motion passed with three aye votes.*

6. Other Business / General Discussion / Comments from the Public

Chair Ellis opened the meeting for comments from the public; there was none.

Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation

At 3:00 p.m., **Chair Ellis** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation. He called the meeting back to order at 4:45 p.m. and immediately adjourned.

[All 3 Commissioners & 4 Ex-Officio members attended the Executive Session.]

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, OCTOBER 15, 2010
APPROVED MINUTES**

Chair John Ellis called the meeting to order at 9:00 a.m. at the Red Lion Hotel in Spokane and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
 Commission Vice-Chair Keven Rojecki, Tacoma
 Commissioner Mike Amos, Selah
 Commissioner Michael Reichert, Marysville
 Commissioner Rebecca Roe, Seattle
 Senator Margarita Prentice, Seattle
 Senator Jerome Delvin, Richland
 Representative Gary Alexander, Olympia
 Representative Geoff Simpson, Covington

STAFF: **Rick Day**, Director
 David Trujillo, Deputy Director
 Mark Harris, Assistant Director – Field Operations
 Amy Hunter, Administrator – Communications & Legal
 Jerry Ackerman, Senior Counsel, Attorney General’s Office
 Gail Grate, Executive Assistant

Chair Ellis announced that the principals seemed to be missing for Item 7 on the agenda, which is the Motion to Strike the Petition for Reconsideration and the Petition for Reconsideration involving Angela Pagnossin. Neither Assistant Attorney General Bruce Marvin nor Angela Pagnossin appear to be present, so Chair Ellis moved on to Item 8 on the agenda.

8. Amusement Games *(PowerPoint Presentation) (Taken out of order)*

Assistant Director Harris reported that at the September Commission meeting the Commissioners asked staff for information on amusement games resulting from a petition request from Funland Amusement Center. There will also be another petition up for discussion today from Dave and Buster’s. The goal of the presentation is to provide an understanding of the licensed amusement game industry in Washington and to provide information about our licensing and enforcement program. Amusement game is defined under RCW as a game played for entertainment and requires active participation of the player. The outcome depends upon a material degree of skill and only merchandise prizes are awarded – either from the device itself or in the form of tickets that can be redeemed for a prize. The outcome is not controlled by the operator. Wagers are placed, the winner is determined, and the distribution of prizes is made in the presence of all those participating in the activity. Amusement game operators must conduct games that involve a material degree

of skill. There are two standards in the WAC that help determine what “material degree of skill” is: do the contestants or participants have a physical or mental ability that play an integral role in the part of determining the outcome of the activity and would the person’s success rate get better if they practiced and played more. If both of those are present, then a material degree of skill is deemed to be present. An amusement device is any mechanical, electro-mechanical, or electronic device that is for entertainment only. It requires active participation, there is a material degree of skill involved, and the outcome is not in the control of any person other than the player. “Entertainment only” basically means there are no prizes awarded. And an example would be a video game.

Chair Ellis asked where the definition of amusement device comes from. In the section of the gambling code defining gambling devices there is a reference to pinball machines and other amusement devices, but he was not able to find a statutory definition. **Assistant Director Harris** did not believe there was one, but he thought there used to be one in the WAC that went away through the RSP process. He believed that, down the road, when the Commission is looking at the amusement game WAC section, staff will be considering putting a definition back into the WAC. The primary difference between an amusement game and an amusement device is whether a prize is awarded.

Assistant Director Harris reviewed the list of amusement game locations that are authorized by RCW, noting that some of the highlighted ones would be agricultural fairs, community and civic festivals, amusement parks, regional shopping centers, locations that have a valid liquor control license and where minors are prohibited from being present, and amusement centers. There are 11 authorized amusement games under WAC, including skating facilities, restaurants, grocery and department stores, and family sports complexes. The descriptions are pretty straight forward, but they can be any variation of those. If it involves tossing or kicking a ball or kicking a ball it would fit under that category. They can also be either coin or token activated, and either be a machine, mechanical, electric, or electro-mechanical where a token or a coin is inserted, or an attended amusement game, like a carnival game, that has a person physically operating it.

The approval process for amusement games is 60 days. Before an operator puts a game into play they are required to submit a description of the game, the rules of play, the group number they think it fits under, and why they think it fits under that group. Then staff would receive the game and review it. At this point staff are receiving between two and four a month, which is fairly high. Agents have been going out and doing inspections and have found several games that were not authorized. They did sort of an emphasis and sent out letters letting them know the games needed to be submitted for review and if they were not, staff would have to take enforcement action. So the operators have been sending more in to get into compliance. Each one takes on average about five hours to review, and the turnaround can be anywhere from one to sixty days. If it is something fairly complicated, or if it looks like it really does not fit somewhere or has something that staff has never seen before, it could take longer to go through the whole review process.

The licensing program has charitable/nonprofit licenses and commercial licenses. There are five licenses in the charitable/nonprofit group. Four of the licenses are based on gross receipts and where the operator either owns or rents the machine to another operator to use. The highest percentage of licenses are in the “A” class, which are premises only locations. The commercial licenses are based on premises only and on gross receipts, with the highest one being premises only. And the range goes all the way to over a million, which currently has nine operators in that category. Class “A” basically starts at \$327 for the first premises where they put a device at, and then each additional premises where they place a device or amusement game is \$150.

Chair Ellis asked if the licensing was based on per machine or per facility that may have a number of machines. **Assistant Director Harris** replied that for the class A it is based on the machine. Basically a class “A” is for a location where a route operator places a machine, like a crane game at a Safeway store. The store would have to get an “A” class license for the location, but the route operator would get a “B” through a “G” license. The “A” licenses are based on the machines, and it could be any number of machines, and the “B” through “G” licenses are based on gross receipts for the operator.

Assistant Director Harris explained that other fees collected from coin and token activated amusement games would be for an annual identification stamp that are placed on any device that is at an “A” class location. For every device a route operator places at a Safeway store or some other location that is not theirs, they have to put an ID stamp on the device. For 2009, fewer than 1,300 ID stamps were issued, which shows how many machines were at the class “A” locations for that year. Amusement game gross receipts; for charitable/nonprofits for the period July 1, 2008, through June 30, 2009, had gross receipts of a little over \$155,000 with net receipts of a little over \$90,000. While the commercial side had gross gambling receipts of a little over \$20 million and net receipts of over \$16 million.

Representative Alexander asked if a licensed gambling facility could also have a licensed amusement operation. **Assistant Director Harris** asked what he meant by licensed gambling. **Representative Alexander** clarified he was asking if a licensed facility that is licensed for gambling; traditional poker or other types of gambling could also be licensed for amusement games. **Assistant Director Harris** affirmed. There are restaurants that have a pull-tab license that will also have an amusement game license. Bingo halls will usually have amusement game licenses also. There are a couple card rooms that have some crane games in their restaurant side. Amusement game gross receipts actually made up .15 percent of the total receipts from gambling activities for nonprofit organizations. They can also operate unlicensed activities if they conduct them less than two times a year, make less than \$5,000, and the activity is conducted for less than a 12-day period. A carnival can do it without a license if they make less than \$5,000 and only do it twice a year. That number would not be included in the chart. Also, if they are operating a fundraising event, they can also include amusement games that would be included under the fund raising event license.

Commissioner Roe asked if that would be \$5,000 per machine or for the full event.

Assistant Director Harris replied it would be for the whole activity. Mostly, those types of

activities would be carnival type games, like at a school carnival. They would have something like a ball toss and a ring toss. Most do not have mechanical devices that are operated; they could, but for the most part they are just the attended type games.

Commissioner Rojecki asked about the gross receipts, referring back to the licensing, and if staff had a breakdown of that. Is it predominately bigger ones like the Puyallup Fair, for example, versus small businesses? **Assistant Director Harris** replied he did not have that information, but he could get it for the Commission. His initial thought would be, yes, it would be based on the higher volume activities. And the other portion that would probably be included in that activity would be the route operators that are operating at the higher level that have devices they have placed in multiple locations around the state. The carnival itself, like the Puyallup Fair, has individual operators, so there could be three or four different operators that are part of the activity that is going on. Each of those operators would have their individual licenses. It would be the operators themselves that would rotate from the Grant County Fair, to the Puyallup Fair, to the Monroe fair, around the state.

Chair Ellis noted the pie charts show the receipt numbers and asked if that was in millions of dollars, and if that excluded tribal casinos. **Assistant Director Harris** affirmed that would just be nonprofit and commercial licensees.

Assistant Director Harris summarized that for the class “A” premises only, the location (like a Safeway store) does not own the device; the device is placed there by a route operator. The store would get some type of lease payment or a flat fee for allowing the route operator to place the device at that location. The class “B”+ licensees would be the route operators that are placing the amusement device, or it could be the locations that own their own games (like a fun center), or a commercial operator for the fair that goes around and operates at different locations. AD Harris referred to the regulatory program, pointing out that up to about 20 years ago agents used to inspect all amusement game locations. Then, about 15 years ago, the Commission went to a more risk-based evaluation, meaning an annual inspection is not done on a lot of the smaller operators. But agents annually do an inspection on the “B”+ and the carnival game operators. If a complaint is received on one of the activities that an inspection is not done on, agents will follow up and do an inspection. They have also done several emphasis patrols, or blitzes, where they have noticed some problems or received a lot of complaints in a certain area. Then the agent will go out and inspect every single licensee that is in that area to make sure everybody is in compliance. Part of the inspection program is to verify that the operation is licensed, the games are one of those 11 authorized categories under WAC, no free plays are awarded, and factors affecting the skill are readily available. At a carnival or fair, the basketball hoop shoot looks like a regulation hoop when a person is standing out in front, but it is actually squished in an oval shape making it a smaller opening. If the carnival operators have something like that, they are required to either have it available for players to look at from the side or a sample one hanging down to show it is actually not a regulation hoop. The outcome requires a material to be a skill and the games are maintained in proper operating condition. An example would be a dart game where the player is throwing a dart at balloons. The darts

actually have to be sharp; they cannot be flat; they cannot have the feather missing off of them.

Agents verify that if school-age minors are allowed in that location that they are prohibited during school hours and after 10:00 p.m. They also verify that prizes do not exceed \$250 and wagers do not exceed 50 cents, and that coin-activated amusement games have an ID stamp if they are at a location that requires an ID stamp. Crane games are inspected to make sure the control of the crane actually lasts 20 seconds; it is capable of reaching all of the prizes in the box, and that the prizes are loose and not packed or intertwined so that the crane will not be able to lift them. An example of an amusement center is “Family Fun Center” that basically has an operation with amusement devices and amusement games, laser tag, rides, and a food and beverage service. Another example of an amusement center would be Chuck E. Cheese. At the fairs and carnivals, agents conduct the same inspections they do at other locations except they do not have the school-age minor restrictions or the wager and prize limits that the other locations have. The Crane games are most commonly seen at grocery stores where the route operators locate their machines. They are also located at bowling centers along with video and amusement games and amusement devices.

Assistant Director Harris briefly reviewed a list of dates for things that have happened involving amusement games over the years, noting the blue insert has a description of all the dates and the activities that took place.

- In 1973, the Legislature authorized persons to conduct and operate amusement games.
- In 1988, the Commission implemented the test program for crane games, which is when the games were first seen. It had wager limits of \$1 for places that had liquor licenses and 25 cents for places like movie theaters, bowling alleys, miniature golf courses, and amusement centers.
- In 1989, the crane test was completed and rules were adopted, keeping those wager limits in place.
- In 1991, RCW 9.46.0331 was amended adding specific locations that were authorized, such as agricultural fairs, amusement parks, amusement centers, and places with a liquor license.
- In 1991, some rules were implemented allowing skating facilities and removing the wager and prize limits for crane games.
- Towards the end of 1991, staff prepared a report on wager and prize limits. At that time, it was recommended that carnivals not have wager limits, which was what was happening at the time and staff had not had any problems with it. It was also recommended to hold off on wager and prize limits for permanent location operators to see what would happen. Staff felt the market would bear out what limits people would be willing to pay for the prizes they would get.
- Later in 1991, a Commissioner requested staff to prepare rules for wager limits and prize limits in that area because he felt the Commission was statutorily bound to do so.

- In 1992, rules were passed that put 50 cent wager limits and \$100 prize limits on amusement games operated at permanent locations.
- In 1997, an operator filed a petition request to increase the wager limits from 50 cents to \$1 and the prize limits from \$100 to \$500. The Commission at the time amended the adoption and put forward just a prize increase of \$250, but left the wager limit at 50 cents.
- In 2007, another operator requested the prize limit be increased from \$200 to \$600 and the wager limit from 50 cents to \$2. The petitioner later pulled the request for the prize limit increase, and the Commission did not approve the wager limit increase because it involved places where children were present.
- In 2008, a distributor filed a petition requesting the wager limit be increased from 50 cents to \$1. That petition was up for final action but died for lack of a motion by the Commission.
- In 2009, RCW 9.46.0331 was amended to clarify the Commission had the authority to authorize other locations for amusement games.

Assistant Director Harris reviewed the list of states, noting the blue handout lists the 2010 wager and prize limits in those states. Only three of those states currently have wager limits. Most of the states have some type of prize value limit, with the exception of California where amusement devices like crane games are illegal, but amusement devices like pinball that give free play are allowed, and they have no limits on carnival games.

Commissioner Roe asked for an example of who the nine licenses would be in the commercial category G (over \$1 million) on the original chart that showed the breakdown on the licensing program. **Assistant Director Harris** replied that would most likely be an operator at a fair. They go around the state from fair to fair. It could also be a route operator that has machines located at several places around the state, like at Safeways. Or it could be a fixed location like a Family Fun Center. AD Harris said he could check with staff and provide a list of those nine licenses. **Commissioner Roe** asked who was getting the gross gambling receipts for the machines at locations like Safeway; whether it was the Safeway, the route operator, or both. **Assistant Director Harris** replied the route operator would get the gross receipts, which would show up in either the B through the D categories. For the “A” category, that would be the license fee for the location, which would be Safeway. They would be getting some type of lease fee or a flat fee from the route operator, for instance a hundred bucks a month if the route operator could place their machine at the Safeway location. **Commissioner Roe** asked whether it was tied to the receipts. **Assistant Director Harris** replied no, the receipts would be tied to the route operator’s license.

Commissioner Amos asked if a route operator with a class C license could come back to the Commission and upgrade his license to a class D if the route operator does better for the year than most and ends up with \$125,000. **Assistant Director Harris** affirmed. Usually the route operator knows before the end of the year that they are going to exceed the license class and would request to upgrade their license. If they did not upgrade before the end of

the year, there would be a penalty associated with that for failure to upgrade. **Deputy Director Trujillo** confirmed the operators themselves are responsible for monitoring how well they are doing throughout the year. If it appears they are going to exceed the license class they were issued, or the class they were authorized to operate at, then it is their responsibility to upgrade during that year. If they do not meet that responsibility, there is a fine associated with that, as well as the upgrade fee.

Commissioner Amos noted the upgrade fee was about \$1,500 difference, so by the end of the year if the route operator is going to be at \$105,000, they have to upgrade and it is going to cost \$1,500 to upgrade. **Deputy Director Trujillo** affirmed, adding he has not seen a licensee who was on the verge of exceeding to be that close. They will generally monitor how they are doing throughout the year. If they are coming down to the end of the wire, they will take steps to either not exceed or pay the upgrade fee.

7. Motion to Strike Petition for Reconsideration and Petition for Reconsideration – Angela M. Pagnossin, Card Room Employee, Revocation

Chair Ellis explained the Commission would now go back to Item #7 on the agenda – the Motion to Strike Petition for Reconsideration and the Petition for Reconsideration of Angela Pagnossin. The item was scheduled to be heard at 9:00 a.m.; it is now 9:30 a.m. Chair Ellis indicated AAG Marvin was present and asked if Angela Pagnossin was present; she was not.

Chair Ellis asked if AAG Marvin had any information about whether Ms. Pagnossin was planning to attend today or not. **AAG Marvin** replied he did not. He noted that at the previous hearing where this was discussed Ms. Pagnossin had indicated that she intended to appear. **Chair Ellis** asked if any of the Commission staff had any information about whether Ms. Pagnossin was likely to attend today. **Director Day** replied there had been no information or updates at the office today.

Chair Ellis reminded everyone of the posture of this matter; that at the September meeting, the Commission heard staff's Motion to Strike Ms. Pagnossin's Motion for Reconsideration on the grounds that she had failed to properly serve the motion. Ms. Pagnossin, at that time, indicated she had documents at home that would demonstrate that she had, in fact, properly served the Motion. So the Commission continued the matter to today in order to give Ms. Pagnossin an opportunity to provide those documents. She had ten days in which to provide the documentation. According to the record the Commission had been given, it indicated that that, at least as of September 22, which Chair Ellis assumed was the end of the ten-day period, neither the Commission nor AAG Marvin had received any documentation. **AAG Marvin** affirmed that was accurate, adding he had submitted declarations from his support staff and Commission members of the Communications and Legal Department (CLD), who would typically be contacted regarding these issues, indicating they had not received that information. It is further pertinent that Michelle Pardee, the paralegal at CLD, had contact with Ms. Pagnossin. Ms. Pagnossin admitted at that time that she did not have the requested documentation.

Chair Ellis believed the materials demonstrated the Commission had not received any such documentation from Ms. Pagnossin. **Ms. Hunter** affirmed that was correct; staff has not received anything from Ms. Pagnossin. **Chair Ellis** indicated that, apparently, they were in a default situation as to Ms. Pagnossin's response, at this point, to the Motion to Strike – at least as to the documentation and Ms. Pagnossin's appearance today. He asked how AAG Marvin would like to proceed. **AAG Marvin** replied staff would like to move for a default, but – and this may be self-contradictory – staff would like to establish on the merits that Ms. Pagnossin has not met her burden, or not complied with the request that was made of her at September's meeting, to provide documentation establishing that she had properly served the Motion for Reconsideration. Accordingly AAG Marvin asked that the Commission grant staff's Motion to Strike the Motion for Reconsideration.

Chair Ellis asked if AAG Marvin's request was that the Commission grant the Motion on the merits, so to speak, as opposed to granting it on the basis of Ms. Pagnossin's default. **AAG Marvin** affirmed he would ask that the Commission grant it on the merits and based on the declarations and additional documentation that was submitted by Commission staff establishing that Ms. Pagnossin, in fact, does not have the documentation that she indicated was available.

Chair Ellis asked, again, if Ms. Angela Pagnossin was present; no one stepped forward.

AAG Ackerman indicated he wanted to make sure he understood what AAG Marvin was asking of the Commission today and so the record accurately reflected that request. Was AAG Marvin asking the Commission to grant his Motion to Strike the Motion for Reconsideration based on the fact that it was untimely and was not properly served? Or would he like the Commission to deny the Motion for Reconsideration based upon Ms. Pagnossin's failure to provide additional information that would justify reconsideration? **AAG Marvin** clarified the additional documentation that was submitted went to support the Commission's staff's Motion to Strike. AAG Marvin was asking that the Commission grant the Motion to Strike Ms. Pagnossin's Motion for Reconsideration for failure to perfect that motion.

Chair Ellis agreed and asked if any of the Commissioners felt the need to move into an executive session to discuss how to resolve this matter or if any of the Commissioners wished to make a motion at this point.

Commissioner Roe made a motion seconded by Commissioner Amos to grant the Motion to Strike the Petition for Reconsideration. Vote taken; the motion passed with four aye votes (Commissioner Rojecki abstained from voting).

Chair Ellis clarified for the record that the motion was approved by the four Commissioners who voted on it and that Commissioner Rojecki continued to abstain on this matter. The record should also reflect the fact that Commissioner Roe has participated in the decision on the Motion for Reconsideration and the Motion to Strike, although she was not originally involved in the determination on Ms. Pagnossin's license. Commissioner Roe has become

thoroughly familiar with the issues and participated in the discussion at the September meeting.

Commissioner Reichert asked if this brought to close all of the outstanding matters with Ms. Pagnossin. **AAG Marvin** affirmed, it does.

RULE UP FOR DISCUSSION

9. Petition from the Public – Funland Amusement Center – Removing wager and prize limitations from Amusement Centers

a) Amendatory Section WAC 230-13-135 – Maximum wagers and prize limitations at certain amusement game locations

Assistant Director Harris reported that Curtis Epping is the owner of Funland Family Entertainment Center, which is an amusement center licensee. The petitioner is requesting that amusement centers be removed from the list of locations required to comply with the 50-cent wager limit and the \$250 prize restriction. This change would allow amusement centers to charge more per play and offer more attractive prizes. The petitioner states that the industry has changed and he is trying to keep up by offering more exciting amusement games with nicer prizes geared toward adults. To do this, Mr. Epping would need to charge a higher price per play. The petitioner states that the market would determine how much he could charge for play; if he was charging too high, nobody would play the activity. **AD Harris** explained that amusement games are played for entertainment only and require a material degree of skill and operators may only award merchandise prizes. Amusement games operated at certain locations have a wager limit of 50 cents and a prize limit of \$250. School age minors are allowed to play at these locations; however, they cannot participate during school hours or after 10:00 p.m. These locations are also required to have adult supervision onsite. Amusement centers are defined as a permanent location whose primary source of income is from the operation of ten or more of these amusement devices. There is no prize or wager limit at the amusement games operated at other locations listed in the rule summary. The Commission has received three petitions in the past 13 years to increase the limits for prizes and wager limits. This petition is a little different in that it requests removing amusement centers from wagering and prize limit restrictions. Staff would need additional time to verify the locations were actually amusement device locations, they have ten or more devices; they are providing adequate adult supervision, and are assuring that minors are not playing during school hours or after 10:00 p.m. Staff would probably be asked to review more submissions if new facilities opened up because the restricted wager limits and betting limits were removed. Staff might also need to look at the activity reporting requirements for the amusement game locations. If the amusement centers were removed from the wager and prize limit restrictions, staff may start to receive similar requests from the other eight licensing categories listed in that rule. Three people testified in favor of the petition at the September Commission meeting.

Chair Ellis asked whether this petition would simply remove amusement centers from the list of locations that are subject to the wager limitation, and leave seven other types of

locations subject to those limitations. As he recalled, in the Dave and Buster's petition they have proposed to simply eliminate the restriction to all eight categories. Chair Ellis asked whether staff thought that within the eight categories of locations subject to the limitation there was a reason to apply a different limitation, or to apply a limitation to some of the locations but not other types of locations. **Assistant Director Harris** replied that, based on the list, he thought that would possibly be a policy decision for the Commission. It looks like all the locations would probably require an adult to be present if minors are operating the activities. **Chair Ellis** asked if AD Harris thought that should be a key factor; whether there is an adult present to supervise minors playing the machines. **Assistant Director Harris** thought that was a very important factor. **Chair Ellis** asked if AD Harris was referring to adults who are employees of the facilities, as well as adults who are accompanying the minors. **Assistant Director Harris** affirmed. **Chair Ellis** indicated that, obviously, there are some categories like movie theaters and bowling alleys where minors might be present without a parent or guardian. **Assistant Director Harris** affirmed, adding it would also apply to Safeway stores where a minor could participate on a crane game at any time. **Chair Ellis** noted that, turning to the policy consideration, it has been listed by staff in the summary that if amusement centers were removed from the wager and prize restrictions in the WAC, the Commission may receive similar requests from the other eight licensing categories and asked if that was a concern for staff. **Assistant Director Harris** affirmed, because staff would probably be back to the Commission seven or eight more times, unless the other locations all came together and proposed the change. **Chair Ellis** asked if the concern was the efficiency of the rule making process and not concerns regarding enforcement in different contexts. **Assistant Director Harris** affirmed that was correct.

Chair Ellis asked if Mr. Epping was present; he was not. He called for public hearing on this petition.

Mr. Max Faulkner, speaking as owner of Atomic Bowl and part owner of Roxbury Lanes, testified he would consider this petition arbitrary. He did not know why an amusement center would be different from a bowling alley in this case. Mr. Faulkner would prefer the Dave and Buster's petition as being more fair.

Chair Ellis asked if Mr. Faulkner saw any reason to distinguish between the different categories. It seems to be implicit in what he was saying that Mr. Faulkner did not see any reason to apply the restrictions in one context of the various ones listed. **Mr. Faulkner** replied that, without a definition of an amusement center, he would see no reason to restrict one and not the others.

Ms. Susan Johnson, with Dave and Buster's, asked if, before the Commission goes into the Dave and Buster's petition, she could read from a letter submitted by the Funland owners as a follow-up to their initial petition. The letter should be in the Commission packet. It was actually an e-mail that was submitted to Susan Arland and read: *"I would like to offer my support to Dave and Buster's proposal along with ours. I would like a minimum \$5 wager limit and \$500 prize limit increase. We are just asking for the increase, however it needs to*

be formulated we would be happy. I think this is a positive indicator that Dave and Buster's are ready to open a location in Washington if the wager limits can be increased. This will bring more investment and jobs to our state. I think this follows along with my letter about bringing quality entertainment to the state of Washington that people can go outside our borders for. I believe this to be good for our state and our citizens. It should create a more sustainable business environment for our industry and this can only help financially our state as a whole. Thank you again for your help and consideration on both proposals."

Signed by Curtis Epping, Funland. Ms. Johnson thanked the Commission.

Chair Ellis asked if there was any other public comment; there was none.

Commissioner Reichert asked the ex-officio members present if the Legislature might have an idea about, vis-à-vis, the expansion of gambling. **Senator Prentice** replied a lot had popped into her head, but she thought since she would not have a vote, she did not want to talk too much. She was reading some of the questions that came up when the Commission tried to work these issues before. It is the kind of issue that she thought would have to develop a little momentum. Senator Prentice had some questions about what the experience now has been. If a location is charging too much, the customers will not play. It is that sort of thing. Senator Prentice has a lot of questions about it, but could not imagine that the Legislature would be real eager to take this up. Maybe she was wrong, and the other legislators could correct her, but there is going to be some very serious stuff to be dealt with. So unless they have done a real good sales job with the Legislature, she could not imagine how. Senator Prentice actually thought there was one location in her district; and that this Dave and Buster's would also be in her district. She thought she had hit the generation gap anyway, and thought it would not hurt to go and look at one, which she planned to do between now and session. But that is just for her own edification. **Chair Ellis** agreed it was a good thing to do. He could not remember if he had ever been in an amusement center, so the amusement game presentation was very helpful as more overview of how they operate and what they are. **Senator Prentice** agreed the presentation was very useful. She was sure she had not been near one.

Director Day pointed out, in response to Mr. Faulkner's comment, that there is a definition for amusement centers that is reflected in this rule summary. Part of what was implicit in AD Harris talking about the concerns about this list is the consistency question; if one is removed off the list then the rest are left there with that kind of problem. Staff has struggled with it because of the nature of fairs which do not have any similar restrictions. So there is a kind of ultimate inconsistency built into the rules anyway, and it does present a real policy problem for the Commission. Director Day thought the Commission could see that as they looked at the historical documents where the Commission struggled with it back when it was originally enacted. There does not appear to be any clear answer.

Commissioner Roe asked if the rationale on the lack of restriction on the fairs was just the idea that they were only going to be four days, or going to be very time limited. **Senator Prentice** replied they have political pull; there are some members who always speak on behalf of the fairs. That was just what she was talking about; they have good friends who

understand it and sway a lot of people. But Senator Prentice could even tell the Commission that this member and that member would speak up on behalf of those, and unless it is horrible, the legislators would go along with it.

Chair Ellis thought there was information in the materials indicating that when the legislation was originally enacted, the fair operators were violently opposed to being subject to the limits, and they apparently were successful in that regard. **Senator Prentice** replied that was part of agriculture. **Director Day** thought part of the answer was that it is tradition; fairs had been around with carnival games for some time when this was enacted. That flows through in not only amusement games, but bingo as well.

Representative Alexander asked how Washington's wager and limit rates compared with the industry as a whole. Are we really low; are we in the middle; are we high? There is this issue of compatibility, or comparison, or ability. It seemed to him the Commission does not want to restrict opportunities if it is something that is going to be overall to the operation and services, and then to jobs and Washington State. He wondered how Washington compared. **Director Day** replied that, from the information available from other states staff have looked at, the Commission's limitations are more restrictive than the other states. Many of the other states have no limitation on amusement game wager limits, and those that have are higher. Staff has not looked at the whole country but, by and large, that is what staff saw. **Assistant Director Harris** affirmed that was correct.

Commissioner Rojecki indicated that comparing it to pull-tabs, historically it looks like – and he has been party to it also – how do those other states compare to Washington State with pull-tab operations as far as maximum dollar amounts – do they even allow pull-tabs? **Director Day** replied there was a number of states that do not allow pull-tabs. He was not sure of the current wager limits in the other states, like Minnesota, and the big pull-tab states that do allow pull-tabs. He did know that the Commission's rules have been frozen in statutes for quite some time, but he thought the time was double decades.

Commissioner Rojecki said that might be a fair comparison because, right or wrong, the Commission, prior to Commissioner Rojecki and many of the current Commissioners, have used that same correlation. He thought it might not be a fair correlation.

Director Day pointed out the struggle over amusement game limitations at 50 cents was reflected in the rule summary as well. There is arguably a more regulated market in the pull-tab side of the industry. Pull-tabs are a chance game entirely; they are not a skill game, but are a pure gambling game, which is one difference. Washington's limit for pull-tabs is \$1.

Chair Ellis indicated that pull-tabs could only be played by adults. **Director Day** affirmed; legally. **Commissioner Roe** thought the players got money prizes on pull-tabs. **Director Day** replied they could have either money or merchandise. **Commissioner Roe** asked which was more common. **Director Day** replied it was money.

RULE UP FOR DISCUSSION AND POSSIBLE FILING

10. Petition from the Public – Dave and Buster’s – Increasing wager and prize limitations for Amusement Games

- a) **Amendatory Section WAC 230-13-135** – Maximum wagers and prize limitations at certain amusement game locations

Ms. Hunter reported Dave and Buster’s is a business that does not currently operate in Washington, but that is looking to open in Washington. They are in 24 other states. Their petition would increase the wagering limits from 50 cents to \$5 and increase the prize limits from \$250 to \$500 for all of those locations listed in WAC 230-13-135. That would include regional shopping centers, movie theaters, bowling alleys, miniature golf courses, skating facilities, amusement centers, restaurants, and department and grocery stores. The 50 cent wager limit was set in 1992 and the \$250 prize limit was set in 1997 as part of the petition that was considered in 1997. Dave and Buster’s house rules impose additional limits on guests requiring anyone who is under 18 to be accompanied by a guardian who is at least 25. It also requires one adult be limited to supervising six minors, which is a different level of detail. Their policy is different from what would be found in WAC. The proposed change would allow the licensees at those locations listed to be able to set limits up to \$5, which would be more comparable to what can be seen at fairs and carnivals.

The modern amusement games are expensive to purchase and maintain, so if the operators are able to set a higher wagering limit, a higher entry amount, that would allow them to buy different games than what they can buy right now. Also, the more modern amusement games may attract adult players and not be as limited to what is thought of as being kid games. The operators could offer prizes such as name brand electronics. Currently, with the \$250 limit, that is more difficult to do. If licensees are able to charge more per play, they may see an increase in gross receipts, which would increase taxes for local governments. Local governments are able to tax these games at up to 2 percent. Some regulatory concerns are that most amusement game activities with wager limits occur at places where there is no immediate supervision and minors have access to play. Staff currently receive very few, if any, complaints. With a higher wagering limit, staff may get some initial complaints or questions, especially from parents whose son or daughter previously asked for 50 cents and now are asking for more. One policy consideration is the higher limits would be allowed at the permanent locations where minors are; although, minors can currently play at the fairs. Staff recommends filing the petition for further discussion.

Chair Ellis called for public comment on this petition.

Ms. Susan Johnson, a partner at Stoel Rives in Seattle, testified she works with hospitality and food and beverage companies; particularly national restaurant and hotel chains that are bringing their business into Washington State for the first time. That is why she is working with Dave and Buster’s. She introduced Lane DeYoung who came up from their headquarters in Dallas, Texas to tell the Commission about their operations and their experiences operating under the amusement rules that exist in the other 24 states they are in.

Mr. DeYoung will be able to answer questions on the practical realities of operating in those environments and provide some clarification on California, whose actual operating approval environment is different from what it looks like on their books. The petition was because as Dave and Buster's came in and began looking at real estate locations for leases, they became aware of the 50 cent per play maximum wager for locations where school-age children are present. They ran it through their business model that works in all their other locations and there was no way to tweak it at that 18-year old 50-cent cap. They looked at the history of the rule, spoke to other stakeholders, and reached out to staff and Commission members to try to come up with something that seemed to make sense. The goal is to fully economically modernize the rule without creating additional regulatory burdens to the extent it can be done, or by creating new policy issues. Mr. DeYoung will explain the more interesting aspects of how a food and entertainment facility works.

Mr. Lane DeYoung, Associate General Counsel for Dave & Buster's, thanked the Commission for allowing him time to present a PowerPoint describing their background in connection with this petition. Not having any operations in this state, Mr. DeYoung tried to set up some background and explain his operations in a greater amount of detail than he might if it was something the Commission could go see on their own. Dave & Buster's is the nation's largest operator of large format, high-volume restaurant entertainment complexes. They offer a wide selection of food, a full service bar, and a vast array of games in the defined terms of Washington, both the amusement games and amusement devices; some that are redemption and some that are not. Throughout the experience in their store, out of the games that do award tickets they have a winner's circle where prizes are available in exchange for those tickets. The company was founded in 1982 in Dallas, Texas; the coming together of James "Buster" Corley and Dave Corriero. They both had establishments in Little Rock, Arkansas; Buster had a restaurant and Dave had a game room. Over time, they noticed their customers were patronizing both businesses, going back and forth. They thought they would be best off to combine forces and create a new concept and open up in Dallas. Over the years, the company has been both publicly traded and private; they are currently private. They held 57 stores in 24 states and one in Toronto. Their international operations are very limited, but they do have one, and some basic company and store sales volumes. Mr. DeYoung included a few shots in his PowerPoint presentation of new stores they have opened: one is in Tulsa, Oklahoma, that opened in January of 2009; one in Indianapolis that opened in June of 2009; and one in the Milwaukee area in Wauwatosa that opened in March 2010 with snow on the ground. The one in Tulsa is about a 17,000 square foot site, and the second two are 35,000 square feet. So, by size, they are fairly large compared to a typical restaurant. It is a much larger box with much larger volume. The next slide shows their current locations, as well as the three sites where they have signed leases: two in the Boston area and Orlando. The two Boston sites are still working their way through planning boards and other entitlement issues, but there are no game-related issues like those he sees here. Orlando is going forward at the present time; construction has started. Dave & Buster's has been in expansion mode for several years. They are funding the expansion out of operations, so it is a measured pace. They are adding three to five stores per year in both of the two formats mentioned earlier; large and small. As time goes on, the goal is to increase that and bump those numbers up a little bit. They

really lack a presence in the northwest quadrant of the country, and there are some markets they find very attractive that they think would be both a good fit for what they bring to the community and also for their business model.

Dave & Buster's has four potential locations in Washington. The current plan would indicate two large formats and two small formats, with the potential for an additional two small formats over the next 10 to 20 years. One note, the Commission will notice not much in the western half of the country at all. Most of their recent store openings have been central and east coast; although, the most northern dot on the map in California has now opened in Roseville, so they have added two to the west. In terms of target markets that are of interest and desire to the company, the west coast and particularly the northwest is high on their list. Dave & Buster's appeals to a broad range of people, with their typical customers being from 21-54. In this notation, families are adults with children; singles would be adults without children, not necessarily single adults. It could be two married individuals; it could be a group of friends; or any combination, just no children. The split is fairly even between males and females, between families and adults. Mr. DeYoung found that almost two-thirds of their customers combine the different aspects of his business model with the eat, drink, and play. So there are people that are not totally coming in to play games, or eat, or have a drink at the bar, but it is usually a combination of two or three of those activities. A key point distinguishing Dave & Buster's from some of the other more kid-centric entertainment amusement centers, such as a Chuck E. Cheese, is they have that adult component to their business. Generally, at a kid-centric location everybody there will be there with their children. It is a decision made by the children and driven by the children to go to a Chuck E. Cheese. Dave & Buster's does not really fit into that category so much; they are much more appealing to a broader audience. They have as great a likelihood as mom and dad wanting to go to Dave and Buster's for the food and the experience as the children saying they want to go to Dave and Buster's. It is not the Chuck E. Cheese painful experience that some of the Commission mentioned. Mr. DeYoung said he had been there; he has kids too, and it is definitely a little different. People will equate them to Chuck E. Cheese. Mr. DeYoung was trying to distinguish a little bit, although on some issues they are somewhat similar.

Chair Ellis asked if, looking at Mr. DeYoung's 64 percent figure combining eat, drink, and play, he had a breakdown as to how many people go to a Dave & Buster's simply to play the machines. **Mr. DeYoung** replied he did not have that information, but he could probably produce that with a little bit of research and e-mail it to the Commission. **Chair Ellis** asked if Mr. DeYoung had a sense of it that the Commission could rely on; is it a very small number? **Mr. DeYoung** estimated it to be a pretty small percent. If somebody just came in and played games and did not have anything to eat or to drink, he would guess it would be under 10 percent; maybe under 5 percent. **Chair Ellis** asked if they were under 18 they could not get in if their policies were enforced. **Mr. DeYoung** affirmed, they could not get in for any purpose; whether to have something to eat or go play games. It is a strict policy throughout the entire building. **Chair Ellis** said that was very good.

Mr. DeYoung explained that in response to their customers' desires to engage in the multiple activities, Dave & Buster's has an eat and play combo where they afford the customers a couple of the activities. It is a value proposition where the customer gets \$10 in game play plus an entrée for \$15.99. There are numerous variants of this where it could be a higher-valued power card, or game card, or different entrees. Dave & Buster's menu usually runs about 125 items and will vary from time-to-time as they change out. There are always new food items being tested and implemented if they are successful. Items that have been there for awhile that become stagnant are removed. They do offer everything from steak to chicken, seafood, pasta, burgers, appetizers, and a dessert menu. The entire menu is served the entire time they are open; there is no abbreviated late night menu, plus the entire menu is available throughout the entire premises. So if customers are back in the midway and want to get a cheeseburger while they are playing games, that is perfectly fine and available all the time in every store. There will be a bar, and they always comply with state laws. So in Washington State, the premises would have the barriers, would have the notices posted, and would be 21 and up. In moving to the play piece, which is kind of the focus today, all of Dave & Buster's games are operated with a power card, so customers do not actually ever put cash into a game. If a customer did not get a power card at a table with a server through any play combo or anything like that, they would go to one of the kiosks where it is more or less self-serve. The kiosks accept cash and credit cards and customers charge basically a stored value card with chips that are then good for the games. The power card has a magnetic strip on the back and is able to store customers' chips, which do not have to be used in any particular visit; tickets can be stored. If a customer has won a lot of tickets and does not want to redeem for a prize, it can be loaded on to the card as well; the card is rechargeable. Dave & Buster's preference would actually be that their customers keep it and bring it back the next time they come in. And through an online database, the card can be registered based on a number; it will protect unused chip balances and tickets if the card is lost.

Dave & Buster's has a basic price structure; a graduated scale so the more chips purchased, the better the value. That is somewhat of a challenge in Washington because in addition to the \$10 charge, Dave & Buster's offers a \$5 and a \$1 charge. They get three chips for a dollar, resulting in a chip rate of 33 cents. The most common buy-in rate is the \$20 rate, but the most expensive chips that might be purchased create a different price structure. So Mr. DeYoung has really struggled with that. The Commission can see if they take the mid-point charge of \$25 and add the \$3 super charge, it is at 17 or 18 cents a chip. It is creating a difficulty in Washington with the limit at 50 cents. Once the power cards have been charged the customers are ready to play. The midway provides an experience, so once the power cards have been charged and the customers have spent their money, there are a variety of games to spend their time on in the midway. The customers that respond to Dave & Buster's surveys indicate the attractiveness of games are a key factor, as well as the availability and variety of games; these are the new popular games. If there is a new popular game and the customer cannot play it because there is a line, that is going to draw down the satisfaction ratings. The customer has put \$20 on that power card; how long did they play? What did they get to play? And was what they wanted to do available? There is not really so much a direct thought of putting a dollar in the machine, it is the broad experience. The

power cards are used on both the redemption and non-redemption games. Mr. DeYoung also struggles with the concept of not really having there is a machine and it is \$5 to play it. It is more the overall time spent and the perceived value of his customers that drives satisfaction.

Mr. DeYoung showed a couple pictures: one showed a driving game that is a for fun, video, non-redemption game where there are no tickets dispensed; and the other showed a water cannon game that would be very similar in experience and would be subject to the Washington State 50-cent limit because it dispenses tickets. All of the featured redemption games are games of skill; they do not have anything that is a game of chance – there are no pull-tabs or any other gambling devices in his locations.

Representative Simpson asked if there was a clear indication on the game as to how much it is costing the players. Do they have to deconstruct the price of each chip in their mind and try to figure out how much it is costing them? Is it something like the game is going to deduct 20 chips from their card? If the players do not know the value of each chip, then they do not know how much the game costs. **Mr. DeYoung** replied there is a rating that shows how many chips – usually not 20 – that is typically a 3.8 or a 2.6 type of number. But he could not really put a price on it because with the sliding value of the chips, it depends on what was paid for the chips. There is a chip value, not a dollar value. Then as players swipe the card, the machine will give a brief readout of their remaining balance on the card.

Commissioner Reichert asked if it was the chip balance or dollar balance. **Mr. DeYoung** replied it was the chip balance. If players started with 48 chips, as they swiped the card they would notch down to 45, 42, etc. They would see the chips coming off there and, relative to the other games, be able to tell how fast it is going off the card.

Mr. DeYoung explained that another of their most popular games is the *Big Bass Wheel*, which is a game where the player starts the wheel in motion. There is a skill stop button that they push and the wheel stops immediately on the number of tickets and they are dispensed. It is very typical of a lot of the games where it is the hand/eye coordination. The player is pushing a button and getting an immediate reaction from the game; there is no delay or residual movement on any part. Across the country, Dave & Buster's has had no problems with any regulatory or state agencies. They are proactive. If there is a game that is questionable in the industry, they will reach out ahead of time to get the game approved. A lot of these games have ways to modify them that states have approved. For example, *Deal or No Deal* has two different chips that regulate the speed. Some states have approved the faster chip and some have not. Dave & Buster's always makes sure they are getting the approvals on the front end and not pushing lines on games; it is just their policy. A key part of their business is distinguishing the kid-centric game centers. It is not a positive experience for a group of adults when kids are running wild, so from the very beginning this has been a core tenet. Kids are in the building but they are supervised; they are with a guardian who is responsible for their behavior. It is a much more controlled environment; it is not a playground running around type of activities that might be seen in other places. Dave & Buster's has a winner's circle for ticket redemption. The tickets can be stored on

the card so players can aim for the larger prizes, which range from plush stuffed animals to candy, glassware, and team-branded merchandise. In a Seattle store players would probably see Husky basketballs and footballs, and Seahawks footballs, and Sounder soccer balls. There are also iPods, iTouch, and Blu-ray players. Dave & Buster's has loyal customers that will save tickets and shoot for the higher value prizes or the newest and greatest items. At one point, when Blu-ray players were new and fairly expensive, they were featured, which were very popular. They do not currently have an iPad, but that would be an example of an item that at a \$250 limit would have to be taken out of those most attractive prizes. With the expanded use of iPods and cell phones, Dave & Buster's also has a somewhat automated feature where once the tickets are on the power card, the players can swipe their power card and redeem the tickets for music that can be downloaded onto a phone or iPod, or burned to a CD. Most people are going for one prize per visit, so at the end of the night they are taking their tickets and cashing them in. But the ability to shoot for a big prize is a key element of the fun, and it definitely adds a lot to the stores. Dave & Buster's goes through 4.6 billion tickets a year; they are the largest user/purchaser of tickets. Dave & Buster's tried at one point experimenting with electronically loading tickets onto cards for game play and it was universally not liked by their guests, so the touch and the feel of the tickets is actually a key element of their guest experience. Their midway operations typically run about 50 percent of their total revenue, so what happens in the midway is critical to their ability to build and operate stores.

Commissioner Reichert asked how that relates to Dave & Buster's overall profit? Fifty percent of gross revenue, but that is a different thing than gross profit. **Mr. DeYoung** did not have all the economic numbers, but responded that generally the midway revenue is going to flow through better because they have fewer costs of goods sold than food, particularly proteins on food items and bar costs. Underlying ingredients result in less flow through than the midway operations that tend to be more upfront cost. With the typical array of about 200 games on a new store, it is well over \$1 million in initial costs. Plus Dave & Buster's are always adding new games and rotating through, so there are more upfront costs in the midway that have to be made up for. They do not have a breakdown between dollars into video non-redemption games and redemption games simply because of the power card set up. He did know just from game utilization rates that about 75 percent of the chips are expended on redemption games. So it is a key component of their ability to operate in the same manner everywhere to be able to predict how a store would perform and have the comfort in the rates of return before making the initial investment to start building stores. Mr. DeYoung briefly touched on the state limits in various other states. Susan Arland had mentioned California. Dave & Buster's has done a fair amount of research, which is done as a standard practice. Before they go into any state there is a consultant they use, which happens to be located out here on the west coast, and they get the initial research done and determine if there are any issues. They have eight stores in California and operate the pusher and other games there, with a couple of modifications that include taking the element of chance out of the game. In creating a truly skill-based game for a lot of their pushers there were modifications made. Pushers are the games with coins that are sliding across a ledge. In California, the lip that is at the edge of the ledge comes off. There are dividers, so coins do not pile up across the entire ledge; they are in segmented passageways.

Then there is a skill aimed stop, so players can direct the coins exactly where they want them to go. With those modifications, a game that from an initial review looked like it could not be operated can be. The other thing that was done was a brief survey of the states that the games were in and what the limit to play a game would be.

Chair Ellis asked if that was something Mr. DeYoung could mail to the Commission to have distributed to the Commissioners. It would be quite helpful for the Commissioners to have that on paper. **Mr. DeYoung** affirmed, then provided some brief highlights: Generally 375, which is on the list for Michigan, stepping up to 4 or 5; several states have a 10 or 15 times the cost of the game; and then from there, 10 to 25 – so nothing under 375 in any of the states Dave & Buster’s is in. On the prize limits, most states do not prohibit or even expressly allow the aggregation of wins. So on each play of the game players might be able to win \$5, but they are not prohibited from saving those up for a prize. That is somewhat key to Dave & Buster’s business model where it is not a \$3 prize each time the game is played. **Mr. DeYoung** said he would put this in a more presentable form and get it back out to the Commission. **Chair Ellis** said the Commission would appreciate that.

Representative Simpson said Mr. DeYoung presented a lot of data and it sounds like he has done a lot of research. Representative Simpson was curious as to what the average intake versus payout in terms of prize value was for a restaurant. Dave & Buster’s brings in “x” amount from their midway games and their prizes go out the other end and are worth “x” amount.

Mr. DeYoung did not have that information, noting that obtaining any of these prizes with tickets is not the most efficient way to do it. If players really wanted the iPod and they wanted it for the cheapest price, they should go to Best Buy or WalMart. It is the residual of the fun and experience; they had three hours of playing games and then walk away with something. There is never any intention to create any value proposition out of it.

AAG Ackerman indicated there was a little bit of an ambiguity in their paperwork and asked for clarification that Dave & Buster’s petition was to increase the maximum wager to \$5 and the maximum prize value to \$500. **Mr. DeYoung** affirmed that was correct and thanked the Commissioners for their time.

Chair Ellis said he appreciated the presentation. He asked if there was any other public comment.

Mr. Kevin Jordan, Nickels & Dimes, testified he was the one who petitioned in 2007 to try to raise the limits. He agreed with the man who commented for the first proposal from the other company and that he thought this one would be the way to do it. When the Commissioners were having their discussion, they were asking about where the rules were in regards to other states. Mr. Jordan currently operates in about 45 states, and has no limitation to this degree in any other state that he operates in.

Chair Ellis asked if Mr. Jordan was saying this was the lowest wager limitation in any of those states. **Mr. Jordan** replied Washington was the lowest state, that most states have no limitations whatsoever. He has been operating in Washington State since 1975. Mr. Jordan also needs to have these increases made because he really needs to be able to bring in the newer equipment and bring in the equipment that can generate his revenues. He has been doing a lot of this across the nation where he has equipment with the iPods and the iTouch and it has really raised his revenues.

AAG Ackerman clarified the reason he had asked the question of Mr. DeYoung was that in the actual amendment in the Commission packet, the document that begins Amendatory Section WAC 230-13-135 has a scrivener's error in it. It proposes to amend the maximum prize cost to \$550. And as Mr. DeYoung has indicated, the petition is actually for \$500. Staff would need to make a change to reflect that correction if the Commission votes to file this for further discussion.

Chair Ellis thanked AAG Ackerman for that correction, indicating he had noticed that in reading the materials but it had slipped his mind. He asked if there was a motion concerning this petition,

Commissioner Rojecki made a motion seconded by **Commissioner Amos** that the Commission propose for further action and file Amendatory Section WAC 230-13-135, as proposed, except have the title section reflect \$500 instead of \$550. *Vote taken; the motion passed with five aye votes.*

Commissioner Reichert asked AAG Ackerman how this related to the prior proposal. Are they going to be amalgamated in some way, or will this overrule it? He was just trying to be clear about that. **AAG Ackerman** replied no, the Commission will have to weigh that question when deciding how they wish to proceed. Certainly, if the Commission wished to, it could propose an alternative that attempted to somehow combine these two proposals. He was not quite sure how that would work, but the bottom line is they will have to take two separate votes. Obviously, if the Commission approves both of the petitions, they could both stand because the first one asks to eliminate a category of facilities from the amusement game rules. The Commission could do that, and then also still vote affirmatively on this petition. There would be no overlap unless the Commission chose to have it.

Commissioner Reichert thought the Commission had taken no action on the first measure. **AAG Ackerman** affirmed that was correct; it was simply up for discussion at this meeting. The Commission will take a later vote on that petition.

Director Day noted that, technically speaking, the Funland petition could be up for final action in November. He asked if the Commissioners would choose staff to put both petitions on the same timeline for final action in January, or would they prefer to move forward and schedule final action on the Funland petition in November.

Chair Ellis indicated the petitioner, Mr. Eppling from Funland, was not present to express his views on that topic. He asked the Commissioners if they had any objection to delaying final action on the Funland petition until the January meeting.

Commissioner Rojecki did not think that would be a problem, but asked AAG Ackerman if the Commission was still within the timelines. **AAG Ackerman** affirmed.

Commissioner Reichert replied he would have a preference for that, as opposed to an objection.

Chair Ellis asked AAG Ackerman if there needed to be a motion on that topic. He gathered it was just a matter of staff preparing the agenda for the respective meetings. **AAG Ackerman** affirmed, indicating he thought the Chair could simply direct which month it was put on the agenda for hearing. **Chair Ellis** agreed to have both petitions up for final action at the January meeting.

Other Business / General Discussion / Comments from the Public

Chair Ellis opened the meeting for public comment; there was none. Chair Ellis explained the Commission was going into an executive session and the meeting would immediately adjourn at the conclusion of the executive session. He announced the next meeting would be in November in Lacey at the Community Center.

Executive Session

At 10:40 a.m., Chair Ellis called for an Executive Session to discuss pending litigation, investigations, and legal advice from counsel.

Commissioners Ellis, Rojecki, Amos, and Reichert, Senator Delvin, and Representatives Simpson and Alexander attended the Executive Session.

Adjourn

Chair Ellis called the meeting back to order at 11:25 a.m. and immediately adjourned.

Minutes prepared by:

Gail Grate, Executive Assistant